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INVESTIGATIVE NARRATIVE
IAB INVESTIGATION #2084975

Subject: **Lynn Rogers, Deputy [redacted]**

Date: **B/T 04/09/2002 & 05/16/2002**

Location: [redacted]

This investigation is related to an Internal Criminal Investigations Bureau (ICIB) investigation where Subject Lynn Rogers was prosecuted for Destroying Evidence, in violation of Penal Code Section 135, a misdemeanor, for destroying an audiotape placed by ICIB investigators on a complainant's telephone to collect evidence of a sexual battery. The sexual battery is alleged to have occurred when the complainant, [redacted] was in the custody of the Sheriff's Department [See ICIB Investigation, Exhibit AA]. On September 26, 2003, Subject Rogers was convicted by a jury and sentenced to a fine and twelve months summary probation [See certified copy of the Superior Court Docket for Case #3CR03001, Exhibit BB].

I, Sergeant John Cleary, was assigned this case on 06/09/2003 and monitored the progress of the criminal investigation. After sentencing I obtained all documents and recordings pertaining to the investigation and interviewed Subject Rogers.

WITNESS STATEMENT

Ms. [redacted]

NOTE: This investigation commenced when Witness [redacted] filed a Watch Commander Service Comment Report at Inmate Reception Center on May 12, 2002. Her statement resulted in a notification to ICIB and a roll out to obtain further information from Witness [redacted] The investigator, Sergeant Deborah Jones [now Lieutenant Jones] interviewed Witness [redacted] Witness [redacted] made several statements to ICIB investigators over a period of days. A more complete version of her statements can be found in the ICIB investigation file (Exhibit AA).

Witness [redacted] told investigators that she had been arrested by the Santa Monica Police Department for violating Section 666 of the Penal Code, Petty Theft with a Prior Conviction, on April 5, 2002. She was in custody at Twin Towers Correctional Facility and went back and forth to LAX Court [where Subject Rogers is assigned] between April 20, 2002 and May 10, 2002 (See Movement Record, Exhibit CC).

Witness [redacted] said that, while at LAX Court, she was approached by Subject Rogers who began to ask her questions about her personal life, such as her marital status and she liked to do when out on a date. Each time Witness [redacted] was in court, the questioning by Subject Rogers

[redacted]

continued. Subject Rogers then began to hug Witness [redacted] and, on at least one occasion, kissed her on the forehead and touch her on the buttocks. Witness [redacted] also said that Subject Rogers offered to drive her home from court when she was released and asked if they could date. According to her, Subject Rogers said he would meet her at a bus stop near a convenience store close to the courthouse. After her release from court, Ms. [redacted] went to the bus stop to wait for Subject Rogers. He did not show up to drive her home.

Witness [redacted] said she was flattered from the attention given to her by Subject Rogers. She then began talking to other inmates, including Witness [redacted] Witness [redacted] Witness [redacted] who were in trial for prostitution. They told Witness [redacted] that Subject Rogers had told them the same things and had given them rides home from court in exchange for sexual favors. Witness [redacted] said this information made her feel angry and used by Subject Rogers. She did not want to see Subject Rogers after her release and filed the SCR to complain about his behavior.

NOTE: [redacted] In order to prove or disprove the contact between Witness [redacted] and Subject Rogers, ICIB investigators connected a recording device in Witness [redacted] home on May 14, 2002, so that she could record telephone conversations between her and Subject Rogers. Witness [redacted] was told not to contact Subject Rogers herself, but to wait until he called her and then turn the recorder on. Witness [redacted] told ICIB investigators that she called Subject Rogers at work and got him to admit to touching her inappropriately when she was in his custody at LAX Court. When the tape was recovered by ICIB investigators, the conversation on the tape did not match the conversation she told the investigators she had. [redacted]

When confronted about the discrepancies between the actual contents of the tape and what Witness [redacted] had to told ICIB investigators was on the tape, Witness [redacted] said, that on May 15, 2002, Subject Rogers came over to her house, seized the tape, and the two of them replaced the tape with one they bought together at a local store. Subject Rogers then made a new recording of a conversation between him and Witness [redacted]

[redacted] Further investigation revealed in store video of Witness [redacted] and Subject Rogers shopping together for audio tapes. It was these images that led to the prosecution of Subject Rogers and his subsequent conviction. [redacted]

[redacted]

Witness [redacted] was interviewed by ICIB investigators as to the whereabouts of [redacted], Subject Lynn Rogers, on May 15, 2002. Witness [redacted] told investigators that she picked up her [redacted] between 8:00 and 8:30 PM on the night of May 15, 2002. She first said her [redacted] probably came home shortly after her arrival. She then recalled her that her [redacted] probably was not at home when she arrived with her [redacted] and she could not remember

exactly when he got home.

Deputy Julio Mata

Witness Mata is a coworker of Subject Rogers, this summary is based on his statement to ICIB.

Witness Mata said that on May 15, 2003 he took a telephone call at work from a woman who told him she was [redacted] Ms. [redacted] wanted to talk to Subject Rogers. Subject Rogers came to the phone and Witness Mata heard him whispering to Ms. [redacted] and then tell her he would call her back later. Witness Mata said he did not give Subject Rogers Ms. [redacted] telephone number.

Ms. [redacted] called back later in the day. Witness Mata said he told her Deputy Rogers was gone for the day. He said Ms. [redacted] sounded nervous and concerned and insisted on speaking with Subject Rogers. Witness Mata kept telling her Subject Rogers was gone for the day. In a rambling statement, Ms. [redacted] then told Witness Mata about the ICIB investigation and mentioned a tape recorder on her telephone. She told Witness Mata that the other females were lying and that Subject Rogers was being set up. Ms. [redacted] told him that Subject Rogers had always been nice to her. Witness Mata said he had no idea what Ms. [redacted] was talking about.

In that Ms. [redacted] sounded so concerned on the telephone, that he decided to call Subject Rogers at home and tell him about the telephone call. Subject Rogers was not at home so Witness Mata left a message that he had received a "strange" telephone call and Subject Rogers should give him a call at the court house for more details.

Witness Mata reported the information concerning the call to Senior Deputy Moten on May 15, 2002. Senior Moten told Witness Mata to write a memo to Sergeant Patricia Young documenting the telephone call from Ms. [redacted] and not to speak with anyone about the possible ICIB case. [A copy of the memo is included as ICIB Exhibit J on page 72 of IAB Exhibit AA]

Senior Deputy Sherman Moten

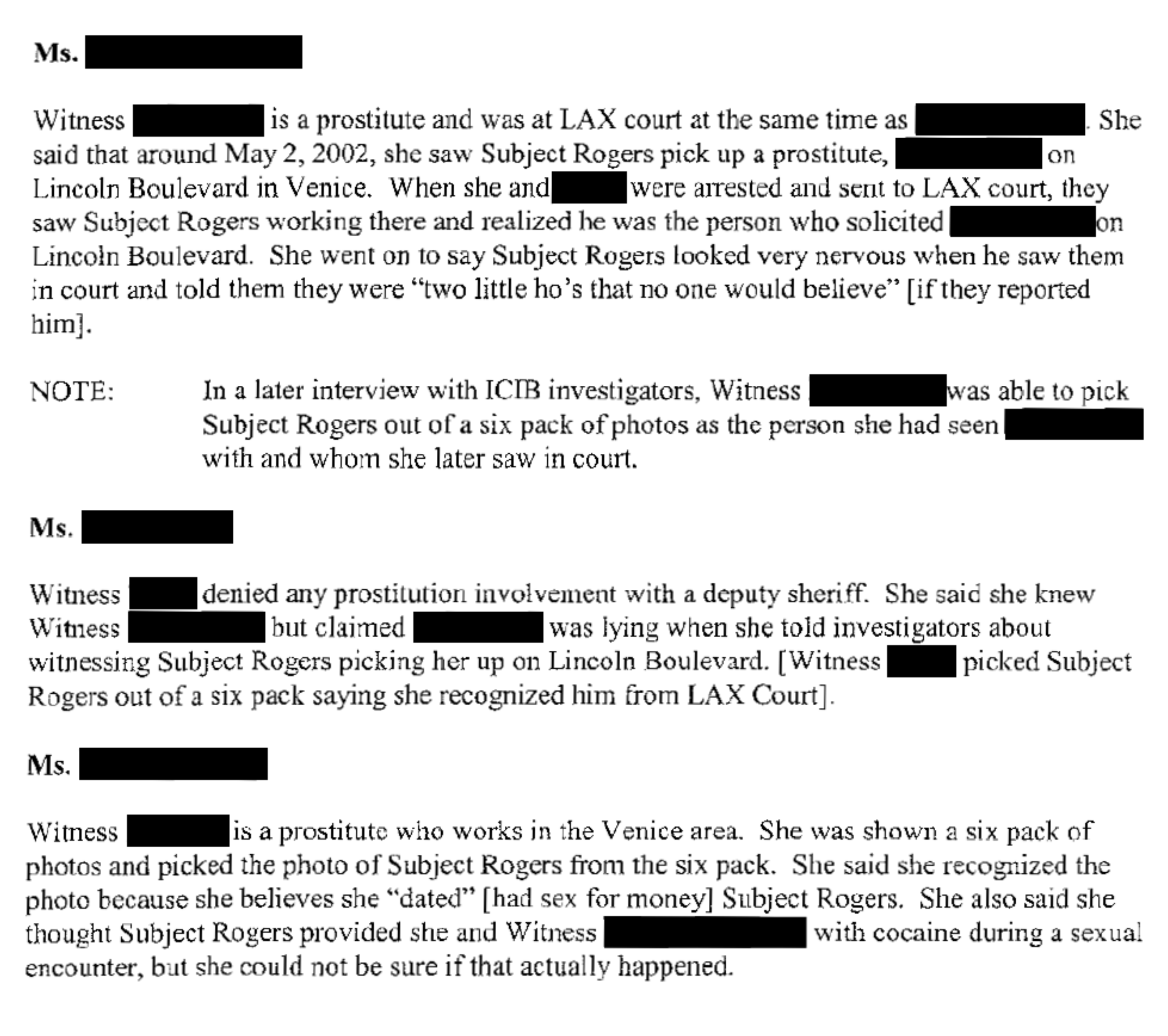
This summary is based on Witness Moten's statement to ICIB.

Witness Moten said Witness Mata reported the information about the telephone calls from Ms. [redacted] on May 17, 2002, not May 15, 2002 as Witness Mata claimed.

NOTE: The discrepancy about the memo dates was cleared up in a follow up interview with Witness Mata and Witness Moten. Witness Mata told Witness Moten about the telephone calls on May 15, 2002 and wrote the memo to Sergeant Young on May 16, 2002. The memo was returned for corrections before being submitted on

May 17, 2002.

Witness Moten said that on May 21, 2002, he entered a control booth at the courthouse. Subject Rogers was on the telephone and Witness Moten heard Subject Rogers tell the other party that his attorney had told him not to talk with them anymore. After hanging up, Subject Rogers told Witness Mata he was "being stalked by a crazy lady" who had been in custody. Subject Rogers denied to Witness Moten that he had done anything wrong with the woman who had been calling him and that he had treated her "professionally." Senior Moten said he asked if Subject Rogers had notified their lieutenant about the calls. Subject Rogers told him the lieutenant was probably aware of the calls because there was an investigation taking place and mentioned then ICIB investigator Sergeant Deborah Jones. Senior Moten said he looked in the computer address book for Sergeant Jones and saw she was assigned to the Office of the Undersheriff. The next day, Witness Moten notified Lt. Barnes of his conversation with Subject Rogers.



Ms. [redacted]

Witness [redacted] is a prostitute and was at LAX court at the same time as [redacted]. She said that around May 2, 2002, she saw Subject Rogers pick up a prostitute, [redacted] on Lincoln Boulevard in Venice. When she and [redacted] were arrested and sent to LAX court, they saw Subject Rogers working there and realized he was the person who solicited [redacted] on Lincoln Boulevard. She went on to say Subject Rogers looked very nervous when he saw them in court and told them they were "two little ho's that no one would believe" [if they reported him].

NOTE: In a later interview with ICIB investigators, Witness [redacted] was able to pick Subject Rogers out of a six pack of photos as the person she had seen [redacted] with and whom she later saw in court.

Ms. [redacted]

Witness [redacted] denied any prostitution involvement with a deputy sheriff. She said she knew Witness [redacted] but claimed [redacted] was lying when she told investigators about witnessing Subject Rogers picking her up on Lincoln Boulevard. [Witness [redacted] picked Subject Rogers out of a six pack saying she recognized him from LAX Court].

Ms. [redacted]

Witness [redacted] is a prostitute who works in the Venice area. She was shown a six pack of photos and picked the photo of Subject Rogers from the six pack. She said she recognized the photo because she believes she "dated" [had sex for money] Subject Rogers. She also said she thought Subject Rogers provided she and Witness [redacted] with cocaine during a sexual encounter, but she could not be sure if that actually happened.

NOTE: A six pack of photos containing a photo of Subject Rogers was shown to another prostitute from the Venice area. Ms. [redacted] could not identify any of the photos in the six pack.

SUBJECT STATEMENT

A transcription of Subject Rogers statement is included in the case file.



County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



April 14, 2004

Deputy Lynn Rogers, #[redacted]

Deputy Rogers:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective at the close of business on May 5, 2004.

An investigation under File Number IAB 2084975, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/050.85, Fraternization, between April 20, 2002 and May 15, 2002, you fraternized with an inmate that was in the custody of the Los Angeles County Sheriff's Department and also after her release from custody within a thirty (30) day period. Furthermore, you did not report such contact in a memorandum to your Unit Commander as required. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about September 23, 2003, you were convicted by a jury of one (1) count of 135 P.C., Destroying or Concealing Documentary Evidence, a Misdemeanor.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.76, Obstructing an Investigation, on or about May 15, 2002, you willfully and knowingly seized evidence (a recorded audio tape) used by Internal Criminal Investigations Bureau for the purpose of recording a conversation between you and a witness. You replaced the evidence with a new "staged" recorded conversation on audio tape between yourself and the witness.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with A/Chief Richard Martinez on May 4, 2004, at 0900 hours, in his office, which is located at 1000 South Fremont Avenue, A9E, 5th Floor South, Alhambra 91803. If you are unable to appear at the scheduled time and wish to schedule some other time prior to May 4, 2004, for your oral response, please call A/Chief Martinez' secretary at [redacted] for an appointment.

If you choose to respond in writing, please call A/Chief Martinez' secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to A/Chief Martinez' office by no later than May 4, 2004.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Eric B. Smith, Captain
Commander, Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

EBS:lh

c: Advocacy Unit
Employee Relations Unit
A/Chief Richard Martinez, Court Services Division
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # 2084975)



CIVIL SERVICE COMMISSION

COUNTY OF LOS ANGELES

June 1, 2005

FINAL COMMISSION ACTION

Subject of Hearing: In the matter of the **discharge**, effective May 5, 2004, of **LYNN ROGERS (Case No. 04-175)**, from the position of Deputy Sheriff, Sheriff's Department.

The Civil Service Commission, at its meeting held on May 25, 2005, approved findings in the above-entitled case. The objections submitted were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure, as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Emi Yamasaki, Chief
Civil Service Commission Services

c: Lynn Rogers
Helen L. Schwab
Daniel C. Carmichael
Terri A. Tucker

ROOM 522 KENNETH HAHN HALL OF ADMINISTRATION • 500 W. TEMPLE STREET, LOS ANGELES, CA 90012 • TELEPHONE (213) 974-2411 • FAX (213) 974-2534

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the **discharge**, effective May 5, 2004, from the position of Deputy Sheriff, Sheriff's Department, of: **LYNN ROGERS** **(Case No. 04-175)**	ORDER OF THE CIVIL SERVICE COMMISSION

On May 25, 2005, the Civil Service Commission of the County of Los Angeles, having read the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore, overruled the objections and adopted, as constituting its final decision, the findings and recommendation of its duly appointed Hearing Officer, Terri A. Tucker, to sustain the department.

Dated this 1st day of June, 2005.

Z. GREG KAHWAJIAN, President

FRANK BINCH, Member

CAROL FOX, Member

EVELYN MARTINEZ, Member

(absent)

EDGAR H. TWINE, Member

COUNTY OF LOS ANGELES CIVIL SERVICE COMMISSION

In re the Appeal of: **LYNN ROGERS,** Appellant, and **LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,** Respondent	**HEARING OFFICER'S REPORT** Terri Tucker Hearing Officer **Case No.: 04-175**

INTRODUCTION

Upon the timely appeal of Lynn Rogers (hereinafter referred to as "Appellant"), Hearing Officer Terri Tucker conducted a hearing pursuant to the order of the Civil Service Commission of the County of Los Angeles on the following days: January 24, 2005, and January 25, 2005. This matter concerns Appellant's appeal of his discharge, effective May 5, 2004, from the position of Deputy Sheriff, Sheriff's Department ("the Department") for violation of policies concerning fraternization, obedience to laws, and obstruction of an internal investigation.

The hearing was conducted under the procedures of the Civil Service Commission, and the Appellant was present at all times during the hearing. A stenographic transcript was made of the hearing, but transcripts were not ordered. Both parties were given the opportunity to present argument and evidence in the form of

exhibits and witnesses who were duly sworn and available for cross examination. The parties were represented as follows.

For the Appellant: James Brady, Esq.
Green & Shinee, APC
16055 Ventura Blvd., Suite 1000
Encino, CA 91436

For the Department: Daniel Carmichael, Esq.
Law Offices of William Balderrama
1000 S. Fremont Avenue
Building A1, Suite 1122
Alhambra, CA 91803

After the close of the hearing, the parties files closing briefs, and submitted additional exhibits as agreed. The record was closed and the matter fully submitted to the Hearing Officer on or about February 22, 2005.

ISSUES

The issues for decision are as follows.

1. Are the allegations contained in the Department's letter dated May 6, 2004 true?

2. If any or all are true, is the discipline appropriate?

FACTUAL BACKGROUND

At all times relevant herein, Appellant worked on the third floor of the LAX courthouse working custody and lockup. [redacted] was an inmate there on April 10, April 26, May 8, and May 10, 2002. Appellant was working on those dates in the area in which [redacted] was in custody. Appellant had met [redacted] previously, sometime in the period of January to March 2002. They had gone to dinner.

On May 12, 2002, [redacted] filed a complaint with the Department against Appellant. She alleged that on the dates named, Appellant had given her special treatment, and had touched her inappropriately. An Internal Criminal Investigation

Bureau (ICIB) investigation was begun by Sgt. Debra Jones. On May 14, Jones met with [redacted] at her house and listened to her story. Jones installed a recording device on [redacted] home telephone, a simple cassette recorder with a line in and out of [redacted] telephone, with a Maxell UR120 audio cassette tape. She instructed [redacted] to wait for Appellant to call her and then try to get him to talk about the alleged inappropriate contact at the jail.

On May 15, 2002 at about 4:15 p.m., [redacted] called Jones and said that she had gotten Appellant to admit to having touched her buttocks when she was in custody. Jones said she would pick up the tape the next morning. Less than an hour later, [redacted] called the LAX courthouse several times trying to reach Appellant. Deputy Julio Mata took the calls. The first or second time that [redacted] called, Appellant was passing by the control booth and took the call as he was leaving for the day. Mata heard him whisper that he would call her back later. [redacted] called several more times after Appellant had left, and in one of the calls she told Mata that Jones had set up a recorder at her house to set Appellant up about him hugging her and that Jones was picking up the tape and [redacted] did not want Appellant to get in trouble. Mata left a message for Appellant at his home saying there was a strange message from a female and it sounded like an emergency.

Jones picked up the tape on the morning of May 16, and although Appellant identified himself on the tape and Jones recognized his voice, the content did not match what [redacted] had told Jones would be on the tape. Jones questioned [redacted] credibility at this point, and on May 17, called and spoke with [redacted] about the discrepancy.

[redacted] told Jones that on the night of May 15 Appellant had come to her house to retrieve the tape containing the incriminating conversation, and that they had gone to

several stores to find a tape matching the one in the recorder. [redacted] told Jones that they had made a replacement tape using her dual tape recorder which incorporated a portion of the original conversation from the original tape onto the new Maxell UR 120 tape they had purchased, stopping short of the incriminating portion of the conversation, and adding additional conversation between Appellant (calling from a phone booth) and [redacted] (in her home) recorded in the recording device Jones had installed. Jones was dubious.

[redacted] had also said that Appellant was coming over to her house on the night of May 17, but although Jones and her partner went there and waited until about 9:30 p.m. for him to arrive, he did not. In addition, when Jones and her partner met with [redacted] at about 9:30 p.m. on May 17, [redacted] appeared to be intoxicated. Earlier they had spoken with [redacted] who owns and lives in the four-unit building where [redacted] lives, and he told them that she was a liar and has lied to get people in trouble in the past.

[redacted] told Jones that they went to the stores in his black Nissan 300ZX. Jones confirmed that Appellant's car is a black Nissan 300ZX. [redacted] told Jones the names and locations of the four stores she and Appellant visited looking for the right brand of tape. On May 28 and 30, Jones and or her partner went to the four stores [redacted] named and obtained the security surveillance tapes for the night of May 15. In all of the tapes both [redacted] and Appellant are visible entering and exiting the store. In the last one, Appellant is seen making a purchase. At the time at which the surveillance tape shows Appellant making the purchase, the detail tape for that cash register shows that Appellant purchased Maxell UR120 cassette tapes, the same brand and type tape Jones had placed in the recorder at [redacted] home.

Jones obtained a search warrant for Appellant's home, and he provided the Fila jacket he is seen wearing in the surveillance videos. Appellant's cell and residential phone records did not show calls to [redacted] residential phone. There were no fingerprints belonging to [redacted] in Appellant's car.

On or about September 23, 2003, Appellant was convicted by a jury of one count of 135 P.C., Destroying or Concealing Documentary Evidence, a Misdemeanor based on the events of May 15, 2002.

DISCUSSION

A. <u>Are the allegations contained in the Department's letter dated May 6, 2004 true?</u>

1. Did Appellant fraternize with an inmate that was in the custody of the Los Angeles County Sheriff's Department in violation of the Manual of Policy and Procedures, Section 3-01/050.85?

The fraternization policy, section 3-01/050.85, provides as follows:

> "Except as permitted by written authority of a member's unit commander, a member shall not fraternize with, engage the services of, accept services from or do favors for any person in the custody of the Department or who is known by the member to have been released from the custody of the Department within a period of 30 days. Any member contacted by, or on behalf of, a prisoner who has been released from the custody of the Department within 30 days shall immediately report such contact in a memorandum to the member's unit commander."

The American Heritage Dictionary of the English Language, Fourth Edition, defines "fraternize" as follows: "To associate on friendly terms with an enemy or opposing group, often in violation of discipline or orders."

In custody. [redacted] is not a reliable historian, and her allegations concerning Appellant having inappropriately touched her while she was in custody lack corroboration in the record. However, Appellant's own statements provide evidence of his having violated the policy while [redacted] was in custody. Appellant stated in his IAB interview that he had met and had dinner with [redacted] in early 2002. He also stated 1) that when she was in custody on various dates in April and May 2002 she was crying and afraid and he "basically tried to reassure her, and offer some time of support;" and 2) that when she was in custody he told her that they were friends. Thus Appellant's undisputed interactions with [redacted] while she was in custody fit the definition of fraternization, and thus violate the policy.

Reporting contacts from an inmate within 30 days of having been in custody. The last date [redacted] was in custody was May 10, 2002. Deputy Mata testified that about 5:00 p.m. on May 15, 2002, while manning the control booth at the airport courthouse lockup facility, he took several calls from a woman who asked to speak to Appellant. During one such call, Appellant was walking by, and took the call, whispered to the caller, and said he would call her back. In a later call, the same woman said Sgt Jones had set up a recorder in her house to set up Appellant about him hugging her and that Jones was picking up the tape and she did not want Appellant to get in trouble. [redacted] talked to IAB about having made these calls, and Appellant does not dispute the fact that the calls took place.

Appellant did not report these calls from [redacted] to his Unit Commander, and thus violated the policy.

Fraternization within 30 days after having been in custody. It is apparent from Appellant's own admissions, as well as the security camera footage of Appellant's presence with [redacted] in four stores between approximately 8:45 p.m. and midnight on

the night of May 15, 2002 that he fraternized with [redacted] within 30 days of her May 10, 2002 release from custody.

Appellant volunteered that he met with [redacted] at her request at a Starbucks on May 15, 2002, that he bought her coffee, and that they discussed her interest in a relationship with him, and the fact that he was married, and her distress over the situation. In fact, Appellant claims that [redacted] was threatening to tell his wife about their alleged sexual relationship, and that he met her at Starbucks and stayed with her while she shopped for a particular audio tape all in an effort to prevent her from telling his wife about them.

Even if Appellant's his story is accepted, he was associating with a woman with whom he had had dinner, whom he had comforted when she was in custody, and whom he had defined as his friend. If they were in search of a matching tape onto which they could record an innocent telephone conversation to replace the incriminating one Jones was expecting to pick up the next morning, Appellant was associating with [redacted] if not as a friend in good standing, certainly as an accomplice in the plan to prevent Jones from receiving a tape that would incriminate Appellant. The association was thus one that disregarded the significance of the boundary between deputy sheriffs and recently released inmates. In either scenario, Appellant violated the policy.

2. **Did Appellant violate the Department's Manual of Policy and Procedures, Section 3-01/030.10, Obedience to Laws, Regulations and Orders?**

The obedience to laws policy, section 3-01/030.10, prohibits member from willfully violating any federal, state or local law. The record shows and Appellant admits that on September 23, 2003 he was convicted by a jury of one count of Penal Code section 135. Appellant therefore violated this policy.

3. **Did Appellant willfully and knowingly seize evidence (a recorded audio tape) used by Internal Criminal Investigations Bureau for the purpose of recording a conversation between Appellant and a witness, and replace it with a new "staged" recorded conversation on audio tape between himself and [redacted] in violation of the Department's Manual of Policy and Procedures Section 3-01/040.76?**

Appellant was convicted of Destroying or Concealing Documentary Evidence in violation of PC 135 in connection with the events of May 15, 2002. That conviction is conclusive evidence of Appellant's guilt, and collaterally estops re-litigation of that issue. Nonetheless, because Appellant has offered an exculpatory explanation for his conduct that night that was not available to the jury, I will, in an effort to accommodate the full range of due process considerations, examine Appellant's explanation in the context of the record before me.

According to investigator Jones, on May 14 Jones placed a recording device on [redacted] phone and asked her to wait for Appellant to call her, and when he did, to try to engage him in a conversation about the inappropriate touching [redacted] alleged had taken place while she was in Appellant's custody. Jones testified, consistent with phone records and [redacted] account, that [redacted] called her on May 15 and sounded very excited that she had obtained a recording of a conversation with Appellant in which he had acknowledged touching her buttocks while she was in custody. However the next day when Jones retrieved the tape [redacted] had left for her and listened to it, there was no such acknowledgement, and no incriminating content.

Jones questioned [redacted] and [redacted] told her that she and Appellant replaced the audio tape Jones had placed in the recording device connected to [redacted] phone with another tape. [redacted] told Jones that she and Appellant had

recorded portions of the original conversation onto the replacement tape, but that they had left out the incriminating statements, and added a new and harmless conversation they staged by Appellant calling [redacted] from a pay phone.

This allegation, as well as the original assertion that there was incriminating content on the first tape, came from [redacted] The record contains many examples of [redacted] contradictory or illogical statements, as well as observations of her being under the influence of alcohol. Thus [redacted] is not a reliable witness.

Even so, reliable testimony, physical evidence and Appellant's admissions establish the following facts:

1) [redacted] called Jones around 4:00 p.m., very excited, and told her that she had a tape-recorded telephone conversation with Appellant in which he acknowledged having grabbed her buttocks;

2) [redacted] called the LAX courthouse lock-up unit and told Deputy Mata that IAB had installed a recorder on her phone to set up Appellant about him hugging her, but that he had been nice to her and she did not want him to get into any trouble;

3) The audio tape Jones had placed in the recorder was a Maxell UR 120;

4) Between 8:45 p.m. and midnight on the night of May 15, 2002 Appellant and [redacted] went in and out of four stores that sell audio cassette tapes;

5) In the last store, Appellant purchased a package of Maxell UR 120 audio cassette tapes;

6) The tape Jones picked up from [redacted] the following morning was a Maxell UR 120 audio tape, but instead of a conversation in which Appellant acknowledged having inappropriately touched [redacted] it

contained a conversation between Appellant and [redacted] which did not include Appellant's acknowledgement of such misconduct.

The fact that Appellant accompanied [redacted] from store to store on the night of May 15 to find a blank tape of the same brand, type and length as the one in the device Jones placed on [redacted] phone raises the very large question of why he did so.

According to Appellant, he and his attorney spoke with the jurors who concluded that he was guilty of PC 135, and the reason they gave for doing so was that he offered no alternative to the prosecution's theory of why he went with [redacted] to the stores, and they were disturbed by his failure to provide an explanation.

In this proceeding, however, Appellant did offer an explanation. On January 6, 2004, he told IA that [redacted] was threatening to tell his [redacted] that he had had a sexual encounter with [redacted] and that he met her at Starbucks at her request to convince her to not call his [redacted] He stated that she wanted him to accompany him to go buy a certain type of tape "because she was into music," and that he kept going with her to each of the four stores in order to keep her calm and to stop threatening to call his [redacted] Appellant gave the same explanation when he testified in this case.

I find this explanation of his reason for going to four stores with [redacted] to search for and purchase a Maxell UR 120 audio to be lacking in credibility and thus unpersuasive for several reasons. First, this explanation is suspect because it was not offered to the jury who convicted Appellant, despite the fact that the outcome of the criminal trial was presumably of supreme importance to Appellant's future as a law enforcement officer. The first time Appellant provided this explanation was in his IAB interview, several months after he learned that the jury reached a guilty verdict in large part because of his lack of explanation for why he went to the stores with [redacted] In addition, it is significant that in explaining why he and [redacted] went on a quest for a

particular kind of audio tape, he still could not explain why [redacted] would have wanted to buy a Maxell UR 120 tape as opposed to any other brand.

Next, the explanation is at odds with common sense. If Appellant's goal that night had been to mollify [redacted] so that she would not tell his wife about their alleged sexual encounter, he could logically have done so with conversation rather than a late-night shopping trip. In addition, if, as he asserts, their only encounter had been to have dinner together, [redacted] threat lacked power.

The more logical explanation, and the one more consistent with the record is that Appellant (and arguably [redacted] wanted to replace the tape Jones had placed in the recorder and which contained an incriminating conversation, with a matching one containing a conversation which would appear to be genuine to Jones, but which would not incriminate Appellant.

Reliable evidence in the record shows that [redacted] called investigator Jones on May 15 and reported having a taped conversation with Appellant in which he admitted to the inappropriate touching of her buttocks; that she later called the courthouse lockup facility and spoke with Deputy Mata; that she told Mata that she had reported Appellant's inappropriate touching, and that an investigator had set up a recorder in her house and that she was picking up the tape and that now [redacted] was trying to warn Appellant because she now did not want Appellant to get in trouble.

Reliable evidence in the record also shows that Appellant accompanied [redacted] to four stores to find a matching tape, that he purchased the matching tape, and that the tape given to Investigator Jones did not contain the admissions [redacted] had described. [redacted] stated that she and Appellant went to the stores in Appellant's car, and [redacted] was able to accurately describe Appellant's car.

Given the totality of circumstances, I must conclude that it is more likely than not that Appellant purchased the Maxell UR 120 audio tape for the purpose of recording a conversation that did not incriminate him, and that he recorded such a conversation and substituted, or caused [redacted] to substitute, the new tape for the old. Accordingly, Appellant violated the departmental policy against the obstruction of an investigation.

B. **If any or all are true, is the discipline appropriate?**

Appellant was convicted of the crime of destroying or concealing evidence, and offers no persuasive evidence that he did not do so. He also admittedly fraternized with an inmate while she was in custody, failed to notify his unit commander when she contacted him five days after her release, and went on to not only fraternize with her within 30 days of her release, but to collaborate with her to falsify evidence in an administrative investigation. Discharge was the appropriate level of discipline.

Chief Richard Martinez was the decision maker in this case.[1] In making his decision, Martinez considered the policy considerations underlying the fraternization policy, and the seriousness of its violation. He stated that it is the Department's responsibility to ensure the well being of the inmates, and that it is therefore critical that the Deputy Sheriffs act professionally as possible. Fraternization, he testified, can lead

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[1] Although Martinez was the Commander and not yet Chief of Court Services at the beginning of the decision-making process, he had the authority as Commander to discharge employees. He was the Skelly officer in this matter. He was involved in discussions with former Chief Moorehead regarding the appropriate level of discipline, and Martinez made the decision to discharge in collaboration with Moorehead. Martinez became Chief on April 1, 2004, two weeks prior to the date of the letter of intent to discharge.

to the erosion of those responsibilities, e.g., in preferential treatment. It can, he explained, affect judgment, and it can create the risk of exposure and liability in instances that can occur by way of compromise in the relationship between inmate and deputy.

The Department's disciplinary guidelines specifically name fraternization with inmates as one of the types of behavior which may result in "relatively harsh discipline, even discharge, without the use of progressive discipline." The guidelines state that the standard discipline for fraternization is discharge, and that the stated penalty "may not be reduced."

The charge of a violation of obedience to law policy does not have a corresponding disciplinary guideline, but the policy itself provides in pertinent part: "According to the nature of the offense, and in conformance with the rules of the County Office of Human Resources, disciplinary action may include, but is not limited to, the following: a reprimand (written); suspension without pay; reduction in rank; dismissal from the Department." The nature of the offense in this instance was tampering with evidence.

Chief Martinez considered Appellant's conviction on a charge of destroying or concealing evidence. He explained that the falsification of evidence violates not only departmental policy, but the Department's core values, and affects deputy sheriffs' ability to perform their duties. The guidelines state that the standard discipline for a first offense of falsification or alteration of evidence is discharge, and that the stated penalty "may not be reduced."

The one difference between what was presented to the jury, and what was presented at the hearing in this matter, is the existence of an explanation from Appellant of why he was with [redacted] in the stores that night. I have read that explanation in the

IAB interview, and I have heard it in Appellant's own testimony at the hearing. It does not alter or successfully rebut the reliable testimony of Jones and the physical evidence presented. It therefore does not affect the appropriateness of the penalty.

In sum then, Appellant has by his own admission fraternized with an inmate in violation of departmental policy, and this is an offense which the Department considers to be so serious as to require discharge. He is a law enforcement officer who has been convicted of a crime which, although a misdemeanor, involves dishonesty and tampering with evidence in an effort to obstruct an administrative investigation. Under the departmental guidelines, the conduct underlying the conviction requires discharge. Discharge is the appropriate remedy for each of the charges, and all three are founded.

FINDINGS OF FACT

1. Appellant was, prior to his discharge, a Deputy Sheriff assigned to the lock-up unit at the airport courthouse.
2. On several occasions in April and May 2002, [redacted] was in custody at the airport courthouse at times when Appellant was working.
3. Sometime in January-April 2002, Appellant had met [redacted] while off duty, and they had gone to dinner.
4. Appellant fraternized with inmate [redacted] while she was in custody when he told her she was his friend, and gave her emotional support when she was afraid and crying.
5. After [redacted] May 10, 2002 release, she contacted Appellant and Appellant failed to notify his supervisor.
6. On May 12, 2002, [redacted] lodged a complaint with the Department, alleging that Appellant had inappropriately touched her when she was in custody.

7. IAB investigator Lt. Debra Jones was assigned to investigate the complaint, and after speaking with [redacted] connected a tape recorder containing a Maxell UR 120 audio cassette to [redacted] phone, and asked [redacted] to wait for Appellant to call and to try to get him to talk about the inappropriate touching while being recorded.
8. On May 15, 2002 at about 4:00 p.m., [redacted] called Jones and told her in a very excited manner that she had taped a conversation in which Appellant acknowledged having touched her buttocks; Jones told [redacted] she would pick up the tape the next morning.
9. On May 15, 2002 at about 5:00 p.m., [redacted] called the LAX courthouse lock-up unit, control booth, and spoke briefly with Appellant; in a later call she told Deputy Mata that IAB had installed a recorder on her phone to set up Appellant about him hugging her, but that he had been nice to her and she did not want him to get into any trouble.
10. On the night of May 15, 2002 at approximately 8:45 p.m., [redacted] accompanied by Appellant purchased a TDK 120 audio cassette tape at a Wherehouse store.
11. Between approximately 8:45 p.m. and 11:00 p.m. on the night of May 15, 2002, Appellant and [redacted] went together to a Wherehouse, then to a Blockbuster, then to a Sav-On, and then to a Walgreens.
12. In the Walgreens, Appellant purchased a package of Maxell UR 120 audio cassette tapes.
13. Appellant testified that he had no explanation for why [redacted] wanted Maxell UR 120 tapes.

14. [redacted] had a dual tape recorder in her home that can record one tape onto another.

15. Appellant denies having ever called [redacted] home.

16. The tape Jones picked up from [redacted] the following morning was a Maxell UR 120 audio tape, but instead of a conversation in which Appellant acknowledged having inappropriately touched [redacted] it contained a telephone conversation between Appellant and [redacted] which did not include Appellant's acknowledgement of such misconduct.

17. On or about May 15, 2002, in violation of departmental policy, Appellant fraternized with an inmate within 30 days of her release from the custody of the Los Angeles County Sheriff's Department when he went with her to four stores to shop for a Maxell UR 120 audio cassette tape.

18. On or about May 15, 2002, in violation of departmental policy, Appellant willfully and knowingly replaced or caused to be replaced, evidence (a recorded audio tape, Maxell UR 120, containing a telephone conversation between Appellant and Johnson which incriminated Appellant) with an identical tape containing a fraudulent, but not incriminating conversation between Appellant and [redacted]

19. On or about September 23, 2003, Appellant was convicted by a jury of one count of 135 P.C., Destroying or Concealing Documentary Evidence, a Misdemeanor, in connection with the events of May 15, 2002, in violation of departmental policy.

20. Appellant's conviction on a charge involving dishonesty and disregard for the integrity of evidence brought embarrassment to the Department and negatively impacted its reputation within the court system which is the Department's primary client.

21. Appellant's explanation of why he went with [redacted] to shop for a Maxell UR 120 audio cassette tape on the night of May 15, 2002 was not credible.

CONCLUSIONS OF LAW

1. [redacted] statements are not reliable evidence of the events at issue.
2. On the basis of reliable testimony and physical evidence, the Department established by a preponderance of the evidence that the allegations of the May 6, 2004 letter of discharge were substantially true.
3. Under the Department's guidelines for discipline, progressive discipline is not required in the case of fraternization or dishonesty or illegal conduct.
4. Under the Department's guidelines for discipline, the penalty for fraternization must be discharge.
5. Under the Department's guidelines for discipline, the penalty for falsification or alteration of evidence must be discharge.
6. Discharge is the appropriate remedy in this case.

RECOMMENDATION

I respectfully recommend that the discharge be sustained.

Dated: March 19, 2005

Terri Tucker
Hearing Officer



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

May 6, 2004

Deputy Lynn Rogers, [redacted]

Deputy Rogers:

On April 14, 2004, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2084975. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, your Division Chief determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on May 5, 2004.

An investigation under File Number IAB 2084975, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/030.05, General Behavior and/or 3-01/050.85, Fraternization, between April 20, 2002 and May 15, 2002, you fraternized with an inmate that was in the custody of the Los Angeles County Sheriff's Department and also after her release from custody within a thirty (30) day period. Furthermore, you did not report such contact in a memorandum to your Unit Commander as required. By your actions, you have brought discredit upon yourself and the Los Angeles County Sheriff's Department.

2. That in violation of Manual of Policy and Procedures Section 3-01/030.10, Obedience to Laws, Regulations and Orders, on or about September 23, 2003, you were convicted by a jury of one (1) count of 135 P.C., Destroying or Concealing Documentary Evidence, a Misdemeanor.

3. That in violation of Manual of Policy and Procedures Section 3-01/040.76, Obstructing an Investigation, on or about May 15, 2002, you willfully and knowingly seized evidence (a recorded audio tape) used by Internal Criminal Investigations Bureau for the purpose of recording a conversation between you and a witness. You replaced the evidence with a new "staged" recorded conversation on audio tape between yourself and the witness.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

WILLIAM T. STONICH
UNDERSHERIFF

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

WTS:WJM:EBS:tm

c: Advocacy Unit
Richard J. Martinez, A/Chief, Court Services Division
Ricardo Cotwright, Captain, Court Services West Bureau
Internal Affairs Bureau
Office of Independent Review (OIR)
Robert C. Lindsey, Director, Personnel Administration